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Order

The proposals are an outgrowth of the work of the Iowa Civil Justice Reform Task Force, which produced a report in early 2012 that recommended changes to discovery processes as well as consideration of a separate track for civil cases falling below a threshold dollar value. In the fall of 2012, to implement these recommendations, a committee was formed. Justice Edward Mansfield served as committee chair, and Professor Laurie Dore of Drake University Law School served as reporter. The committee members also included three district judges, five attorneys in private practice, a government attorney, an in-house counsel, and a professor of civil procedure from the University of Iowa College of Law. The court appreciates the hard work and dedication of the members of the committee.*

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The committee held a series of meetings between November 2012 and July 2013. Ultimately, the committee developed and recommended a set of changes to the existing discovery rules as well as a proposed new rule authorizing streamlined and expedited case procedures for actions involving \$75,000 or less in money damages. The supreme court has reviewed these proposals. The court has now decided to solicit comments from the public on the proposals.

Both the committee and the court are concerned about the declining number of civil jury trials in Iowa courts. In 2012, there were only 204 civil jury cases tried to verdict in our courts. Many attribute this to the increased time and expense involved in trying cases to verdict. The proposed discovery rule changes and the proposed expedited civil action rule are intended to reduce costs and delay in discovery, make it more economical to litigate cases to conclusion (especially when \$75,000 or less is at stake), and enable more Iowans to have access to justice.

The full texts of the proposed discovery rule changes and the proposed new expedited civil action rule are attached. The expedited civil action rule also includes a health care provider statement that may be used in lieu of testimony. That form is also attached.

1. Proposed Amendments to Iowa Discovery Rules

By way of overview, the following changes to current discovery rules are proposed:

- *Initial disclosures:* Shortly after commencement of litigation, parties would have to make simultaneous initial disclosures of certain information and documents. These would be analogous to some extent to the disclosures required in federal court by Federal Rule of Civil Procedure 26(a)(1). Additional

disclosures, however, would be required in certain categories of cases. Disclosures would have to be supplemented as needed. Failure to supplement without good cause would result in exclusion of the supplemental information.

- *Expert disclosures:* In lieu of the existing expert interrogatories (see Iowa R. Civ. P. 1.508(1)(a)), parties would be required to provide expert reports for experts specially retained for litigation. These reports would be similar to the expert reports required in federal court by Federal Rule of Civil Procedure 26(a)(2). Discovery of draft expert reports and communications between the expert and the attorney for the party retaining the expert would be prohibited in most cases.
- *Certification of personal efforts:* In most cases, before bringing a discovery motion, the movant would have to certify that he or she in good faith personally spoke with or attempted to speak with other affected parties in an effort to resolve the dispute without court action. The certification would have to identify the date and time of the personal conference and any attempts to confer.
- *Responses subject to objections:* If a party responds to an interrogatory or request for production with an objection but also provides information or documents, the response would have to make clear the extent to which the requested information or documents are being provided, and the party would remain under an ongoing duty to supplement any response to that extent.
- *Pattern discovery requests:* The rules would expressly allow for pattern interrogatories and pattern requests for production, to be approved at a later date by the supreme court. Any pattern interrogatory, and its subparts, would count as only one interrogatory.
- *Limits on objections and instructions not to answer during depositions:* The rule regarding conduct of depositions would be amended to provide that objections must be stated concisely in a nonargumentative and nonsuggestive manner, and deponents may be instructed not to answer only when

necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion to terminate or limit the examination.

- *Scope:* These rule changes would apply to all civil actions, including those under the expedited civil action track discussed below.

2. Proposed Expedited Civil Action Rule

The proposed rule governing expedited civil actions includes the following components:

- *Case eligibility:* The sole relief sought must be a money judgment. All claims brought by or against any party (other than counterclaims) must total \$75,000 or less. The \$75,000 limit includes everything but costs and post-filing interest. The plaintiff would decide whether to opt in. Once in, the plaintiff would be bound by the \$75,000 limit. If circumstances change substantially, however, or if a compulsory counterclaim is filed in excess of \$75,000, the court may remove a case from the expedited civil action docket. Parties may also stipulate to have any civil case handled as an expedited civil action.
- *Limits on discovery and experts:* No more than ten interrogatories, ten requests for production, and ten requests for admission could be served (except for requests to admit the genuineness of documents). Each party may be deposed, and each side may depose up to two nonparties. No more than one expert per side could be used except by agreement of the parties or for good cause shown.
- *Limits on summary judgment motions:* Only one summary judgment motion may be filed per party, and only the following grounds are permitted: (1) to collect on a liquidated debt; (2) to assert an immunity; (3) failure to comply with an expert witness disclosure deadline; and (4) to assert an affirmative defense.

- *Expedited and streamlined trial:* Trial would be scheduled to occur within one year of filing. Trial would be to a panel of six jurors, with three peremptory strikes available per side during jury selection. After three hours of deliberation, a 5-1 verdict would be permissible. One set of joint jury instructions must be submitted before trial, with alternative instructions in any area of disagreement. Each side would be subject to an overall six hour time limit for jury selection, opening statements, presentation of evidence by direct or cross-examination, and closing arguments. The goal is for the trial to be completed in two days. There would be no court-ordered alternative dispute resolution unless the parties agree.
- *Permitted for bench trials:* The expedited civil action procedure would accommodate trials to the court. In that event, the court could render a verdict based on the same jury instructions and verdict forms that would be used in a jury trial, without the need for preparing findings of fact and conclusions of law.
- *Some modification of the hearsay rule:* Certain records could be admitted, subject to prior notice, without testimony or a declaration from a custodian. In addition, in lieu of testimony from a treating health care professional, a completed health care provider statement could be used. This statement would conform to a standard form that asks about injuries the plaintiff sustained, treatment necessitated by those injuries, restrictions or limitations on the plaintiff as a result of those injuries, and similar matters.

The foregoing are summaries of the proposals. Interested parties should refer to the attached proposals themselves.

The supreme court seeks public comment on these proposals prior to taking further action on them. Copies of the proposed amendments to the discovery rules and the proposed expedited civil action rule and care provider statement can be found at:

www.iowacourts.gov/About_the_Courts/Supreme_Court/Order/. In addition, copies are available at the office of the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa, 50319.

Any interested organization, agency, or person may submit written comments. Comments about a proposed rule must refer to the specific rule number (for example, Rule 1.XX1(2)(a)) and the specific numbered line or lines to which the comments are directed. Comments sent by email must be emailed to **rules.comments@iowacourts.gov**, must state "Discovery Rules" or "Expedited Civil Action" in the subject line of the email, and must be sent **as an attachment to the email in Microsoft Word format**. Instead of submission by email, comments may be delivered in person or mailed to the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa, 50319.

Any comments received may be posted on the Iowa Judicial Branch website.

The deadline for submitting comments is 4:30 p.m. on January 31, 2014.

Dated this 1st day of November, 2013.

The Supreme Court of Iowa

By Mark S. Cady
Mark S. Cady, Chief Justice